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Issue of summons on First amended Complaint

U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

FILED

11                   **UNITED STATES DISTRICT COURT**  
12                   **CENTRAL DISTRICT OF CALIFORNIA**

13     LOIS GRADY, KAYE STEINSAPIR,  
14     BARBARA GÓNZALES, FRANK  
15     BODEMAN, and CRAIG ANDERSON  
16     individually and on behalf of all others  
17     similarly situated

18                   Plaintiffs,

19     vs.

20     MENU FOODS INCOME FUND,  
21     MENU FOODS, INC., MENU FOODS  
22     LIMITED, MENU FOODS OPERATING  
23     LIMITED PARTNERSHIP, MENU  
24     FOODS MIDWEST CORP., CHEM  
25     NUTRA INC., PETCO ANIMAL  
26     SUPPLIES, INC., NUTRO PRODUCTS,  
27     INC. and DOES 1 through 10, inclusive,  
28     Defendants.

) Case No. CV 07-02253-DDP (PLAx)  
      FIRST AMENDED COMPLAINT  
      FOR DAMAGES AND  
      EQUITABLE RELIEF:

1. STRICT PRODUCTS LIABILITY
2. NEGLIGENCE
3. BREACH OF WARRANTIES
4. UNFAIR BUSINESS PRACTICES(CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 ET SEQ.)
5. FALSE ADVERTISING (CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500 ET SEQ.)
6. CONSUMER LEGAL REMEDIES ACT (CALIFORNIA CIVIL CODE SECTION 1770 ET SEQ.)

29                   **DEMAND FOR JURY TRIAL**

30     FIRST AMENDED COMPLAINT



1  
2 Plaintiffs Lois Grady, Kaye Steinsapir, Barbara Gonzales, Frank Bodeman, Craig  
3 Anderson, individually on behalf of themselves, and on behalf all others similarly  
4 situated, and the general public, on information and belief, make the following  
5 allegations to support this First Amended Complaint:  
6

7 **INTRODUCTION**

8 1. Plaintiffs file this class action on behalf of themselves and similarly  
9 situated individuals whose pets died and/or became seriously ill after ingesting  
10 various brands of tainted dog and cat food manufactured, distributed and/or sold  
11 by Menu Foods and its related companies throughout the State of California and  
12 the United States. The food, including popular brands such as Iams, Eukanuba,  
13 Nutro Natural Choice, Nutro Ultra, Special Kitty, Loving Meals, Winn Dixie,  
14 Science Diet, Ol' Roy and other labels that were marketed to consumers as healthy  
15 and nutritious food for their pets, was found to contain a toxic compound, which  
16 has been variably identified by the defendants as either aminopterin (a toxin used  
17 to kill rats and other rodents) or melamine (a chemical substance used in plastics  
18 and fertilizer).

19  
20 2. Menu Foods knew that its food was causing harm to pets for over three  
21 weeks before it finally issued what is purported to be one of the largest, if not the  
22 largest, recalls of products in the pet food industry's history. During the weeks  
23 and months following the recall, as additional pets were getting sick or dying,  
24 Menu Foods was forced to concede that its recall was too limited. Indeed, it was  
25 forced to expand its recall on several occasions. In the meantime, countless pets  
26 have died, experienced kidney failure and/or suffered other serious adverse health  
27 consequences as a result of eating the contaminated food.

## NATURE OF THE ACTION

2       3. Plaintiffs bring this action on behalf of themselves and all other pet  
3 owners residing in the United States who purchased any of the tainted pet food  
4 and/or whose dogs or cats became sick or died as a result of ingesting the tainted  
5 pet food.

## **JURISDICTION AND VENUE**

7       4. This action which was originally filed in Superior Court for the County  
8 of Los Angeles on March 27, 2007 was removed to this court by the Menu Foods  
9 Defendants on April 5, 2007 pursuant to 28 U.S.C. §§ 1441 and 1446. The  
10 jurisdiction of this Court was invoked under 28 U.S.C. § 1332(d)(2) as a class  
11 action involving citizens of different states in which the amount in controversy  
12 exceeds \$5,000,000.00.

14       5. This Court has personal jurisdiction over the defendants because they  
15 are citizens of and/or doing business in the State of California.

17       6. Venue is proper in this judicial district by virtue of 28 U.S.C. § 1391  
18 because, among other things, a substantial part of the acts or omissions complained  
19 of occurred in this judicial district and/or because one or more of the defendants  
20 reside in this judicial district.

## **PLAINTIFFS**

23       7. Plaintiff Lois Grady (“Ms. Grady”) is a resident of the County of Fresno  
24 and a citizen of the State of California. Ms. Grady is the owner of a cat named  
25 Riley, who became ill upon ingesting tainted pet food manufactured and  
26 distributed by Defendants, including, without limitation, Special Kitty pet food.  
27 In or about March, 2007, Plaintiff Lois Grady fed Special Kitty cat food, one of

1 the brands of tainted Pet Food, to her cat, Riley. Ms. Grady had purchased the  
2 Special Kitty food at a Wal-Mart store in Fresno, California. Shortly thereafter,  
3 Riley refused to eat his food, became lethargic and suffered from bouts of  
4 vomiting. Riley also lost weight and appeared seriously ill. Ms. Grady became  
5 extremely concerned and took Riley to the veterinarian. After performing blood  
6 and urine tests, the veterinarian diagnosed Riley as suffering from kidney failure.  
7 Riley required extensive veterinarian treatment and will require a special diet for  
8 the remainder of his life. Prior to that time, Riley had been in excellent health.  
9 Ms. Grady is informed and believes that her cat's illness was directly caused by  
10 the ingestion of Special Kitty, which is one of the numerous tainted pet food  
11 products manufactured and distributed by Defendant MENU FOODS. As a result,  
12 Ms. Grady has sustained compensatory damages, including, without limitation,  
13 veterinary bills and related expenses. Ms. Grady brings this action on behalf of  
14 herself and all others similarly situated

15  
16       8. Kaye Steinsapir ("Ms. Steinsapir") is a resident of the County of Los  
17 Angeles and a citizen of the State of California. Ms. Steinsapir is the owner of a  
18 cat named Lila, who became ill upon ingesting tainted pet food manufactured and  
19 distributed by Defendants, including, without limitation, Nutro Natural Choice cat  
20 food. Ms. Steinsapir purchased the contaminated at a Petco store in Los Angeles  
21 County, California. Plaintiff Kaye Steinsapir fed her four-year-old cat, Lila, Nutro  
22 Natural Choice cat food - one of the brands of tainted Pet Food – since Lila was a  
23 kitten. She continued to feed Lila Nutro Natural choice through and including  
24 March, 2007. Ms. Steinsapir believed she was feeding Lila one of the healthiest,  
25 nutritious cat foods available on the market. Prior to March, 2007, Lila was a  
26 healthy, vibrant cat without any medical conditions. However, in or about March,  
27 2007, Lila became seriously ill after Ms. Steinsapir fed her Nutro Natural Choice

28

1 foil pouches. Lila began vomiting repeatedly and drinking an excessive amount of  
2 water. Although Lila had always had a very healthy appetite prior to March, 2007,  
3 she stopped eating her wet food. Ms. Steinsapir brought Lila to her veterinarian,  
4 who diagnosed Lila with acute kidney failure. Lila was subsequently hospitalized  
5 and required extensive veterinary treatment, including, but not limited to,  
6 intravenous fluids and a urinary catheter that required her to be placed under  
7 anesthesia. Prior to ingesting the tainted Pet Food, Lila had been playful, full of  
8 energy and never suffered any illness whatsoever. Ms. Steinsapir is informed and  
9 believes and thereon alleges that Lila will require a special diet for the rest of her  
10 life and will also require veterinary care for the foreseeable future. Ms. Steinsapir  
11 is informed and believes and thereon alleges that her cat's illness was directly  
12 caused by the ingestion of Nutro Natural Choice, which is one of the numerous  
13 tainted pet food products manufactured by Defendant MENU FOODS. As a  
14 result, Ms. Steinsapir has sustained compensatory damages, including, without  
15 limitation, veterinary bills and related expenses. Ms. Steinsapir brings this action  
16 on behalf of herself and all others similarly situated.

17

18 9. Barbara Gonzales is a resident of Bakersfield, California and a citizen of  
19 the State of California. Ms. Gonzales owned a cat named Meme who became ill  
20 upon ingesting tainted pet food manufactured and distributed by Defendants,  
21 including, without limitation, Special Kitty Select cat food. Ms. Gonzales had fed  
22 her cat Special Kitty Select Gourmet pet food which was purchased at Walmart in  
23 Bakersfield, California. In early March 2007, Meme became ill and as result Ms.  
24 Gonzales took Meme to the veterinarian on several occasions. However, despite  
25 being treated by the veterinarian, Meme became sicker and eventually died on  
26 March 17, 2007. Ms. Gonzales is informed and believes and thereon alleges that  
27 her cat's illness and death was directly caused by the ingestion of Special Kitty

1 Select cat food, which is one of the numerous tainted pet food products  
2 manufactured by Defendant MENU FOODS. As a result, Ms.  
3 Gonzales has sustained compensatory damages, including, without limitation,  
4 veterinary bills and related expenses. Ms. Gonzales brings this action on behalf  
5 of herself and all others similarly situated.

6

7       10. Plaintiff Frank Bodeman is a resident of Alhambra, California and a  
8 citizen of the State of California. Mr. Bodeman owned a cat named Princess who  
9 became ill upon ingesting tainted pet food manufactured and distributed by  
10 Defendants, including, without limitation, Special Kitty Select cat food and Iams.  
11 Mr. Bodeman fed his cat Special Kitty Select Gourmet pet food which was  
12 purchased at Walmart in Rosemead, California. In or about March 2007, Princess  
13 became ill and as a result Mr. Bodeman took her to the veterinarian on several  
14 occasions. However, Princesses became sicker and eventually died on or about  
15 March 22, 2007. Mr. Bodeman is informed and believes and thereon alleges that  
16 his cat's illness, which included kidney failure, and eventual death was directly  
17 caused by the ingestion of Special Kitty Select cat food, and/or one of the  
18 numerous tainted pet food products manufactured by Defendant MENU FOODS.  
19 As a result, Mr. Bodeman has sustained compensatory damages, including,  
20 without limitation, veterinary bills and related expenses.. Mr. Bodeman brings  
21 this action on behalf of himself and all others similarly situated.

22

23       11. Plaintiff Craig Anderson is a resident of Palmdale, California and a  
24 citizen of the State of California. Ms. Anderson owned a dog named Harry who  
25 became ill upon ingesting tainted pet food manufactured and distributed by  
26 Defendants, including, without limitation, Ol'Roy dog food. Ms. Anderson fed  
27 her dog Ol' Roy pouches dog food which was purchased at Walmart. In or about

28

1 mid March 2007, Harry became ill and was taken to the veterinarian on several  
2 occasions. However, Harry became sicker and eventually died on or about March  
3 25, 2007. Ms. Anderson is informed and believes and thereon alleges that his  
4 dog's illness and eventual death was directly caused by the ingestion of Ol' Roy  
5 pouches dog food, and/or one of the numerous tainted pet food products  
6 manufactured by Defendant MENU FOODS. As a result, Ms. Anderson has  
7 sustained compensatory damages, including, without limitation, veterinary bills  
8 and related expenses. Ms. Anderson brings this action on behalf of herself and all  
9 others similarly situated.

10

11

### DEFENDANTS

12. Plaintiffs are informed and believe and thereon allege that  
13 Defendants MENU FOODS INCOME FUND, MENU FOODS, INC., MENU  
14 FOODS LIMITED, MENU FOODS OPERATING LIMITED PARTNERSHIP,  
15 MENU FOODS MIDWEST CORP. (the Menu Foods entities are collectively  
16 referred to as "MENU FOODS"), CHEM NUTRA, INC., PETCO ANIMAL  
17 SUPPLIES, INC. (hereinafter "PETCO"), NUTRO PRODUCTS, INC. and Does 1  
18 through 10, are corporations or other business entities doing business in the State  
19 of California and throughout the United States. Plaintiffs are further informed and  
20 believe and thereon allege that all named Defendants either manufactured, sold,  
21 re-sold, inspected, marketed, distributed and/or placed into the stream of  
22 commerce numerous brands of pet food and/or pet food ingredients such as wheat  
23 gluten, (hereinafter referred to as the "Pet Food" or "PRODUCT") that was  
24 ingested by pet animals belonging to Plaintiffs and others similarly situated, and  
25 caused these pets to become ill and/or die. The tainted Pet Food included, without  
26 limitation, popular brands such as Nutro Natural Choice, Iams, Eukanuba, Nutro  
27 Ultra, Special Kitty, Loving Meals, Winn Dixie, Science Diet, Ol' Roy Pouches

28

1 and numerous other brands, some of which have since been recalled. As a result  
2 of Defendants' conduct, Plaintiffs, and all others similarly situated, sustained  
3 damages.

4

5       13. Plaintiffs are further informed and believe and thereon allege that  
6 defendant CHEM NUTRA is a corporation duly registered under the laws of the  
7 State of Nevada. Plaintiffs are further informed and believe and thereon allege  
8 that defendant CHEM NUTRA supplied tainted or contaminated wheat gluten to  
9 various pet food manufacturers and/or distributors, yet failed to inform the general  
10 public about the tainted ingredients, despite the fact that CHEM NUTRA knew or  
11 should have known that the wheat gluten it had supplied was poisonous and was  
12 likely to cause death or serious illness when ingested by animals. As a result of  
13 the acts and omissions of CHEM NUTRA, pets belonging to Plaintiffs and others  
14 similarly situated became sick and/or died.

15

16       14. Plaintiffs are further informed and believe and thereon allege that  
17 defendant PETCO is a citizen of California in that its principal place of business  
18 and corporate headquarters are located in the State of California. Defendant  
19 PETCO sold and marketed various tainted pet foods, including, without limitation,  
20 Nutro Natural Choice .

21

22       15. Plaintiffs are informed and believe and thereon allege that Defendant  
23 Nutro Products Inc., which distributes Nutro Natural Choice and other pet foods,  
24 is a corporation duly registered under the laws of the State of California.

25

26       16. Plaintiffs are informed and believe and thereon allege that Defendants  
27 MENU FOODS INCOME FUND, MENU FOODS, INC., MENU FOODS

LIMITED, MENU FOODS OPERATING LIMITED PARTNERSHIP, MENU FOODS MIDWEST CORP. are related and affiliated companies which manufacture, distribute, market and sell various products intended to be used as food for dogs and cats, including Iams, Eukanuba, Nutro Natural Choice, Nutro Ultra, Special Kitty, Loving Meals, Winn Dixie, Science Diet, Ol' Roy and other labels that were marketed to consumers as healthy and nutritious food for their pets, yet in fact contained poisonous compounds.

9        17. The true names and capacities, whether corporate, associate,  
10 individual or otherwise of defendants DOES 1 through 10, inclusive, are unknown  
11 to plaintiffs, who therefore sue said defendants by such fictitious names. Each of  
12 the defendants designated herein as a DOE is negligently or otherwise legally  
13 responsible in some manner for the events and happenings herein referred to and  
14 caused injuries and damages proximately thereby to the plaintiffs, as herein  
15 alleged. Plaintiffs will ask leave of Court to amend this Complaint to show their  
16 names and capacities when the same have been ascertained.

18        18. At all times herein mentioned, defendants, and each of them, were the  
19 agents, representatives, employees, successors and/or assigns, each of the other  
20 and at all times pertinent hereto were acting within the course and scope of their  
21 authority as such agents, representatives, employees, successors and/or assigns.

## **CLASS ACTION ALLEGATIONS**

24       19. Plaintiffs bring this action on behalf of themselves and all others  
25 similarly situated as a class action pursuant to Rule 23(b)(2) and/or (b)(3) of the  
26 Federal Rules of Civil Procedure. The class that Plaintiffs seek to represent  
27 (herein referred to as “PLAINTIFF CLASS”) is composed of and defined as

1 follows:

2           **All pet owners residing in the United States who**  
3           **purchased the tainted Pet Food and/or whose dogs or cats**  
4           **became sick and/or died as a result of ingesting the tainted Pet**  
5           **Food.**

6

7       20. The members of the class are so numerous that joinder of all members  
8 would be unfeasible and not practicable. The membership of the entire class is  
9 unknown to Plaintiffs at this time; however, it is estimated that the entire class is  
10 greater than 1,000 individuals, but the identity of such membership is readily  
11 ascertainable via inspection of records and other documents maintained by  
12 Defendants.

13

14       21. There are common questions of law and fact as to the class which  
15 predominate over questions affecting only individual members including, without,  
16 limitation:

- 17           A.     Did Defendants either manufacture, sell, inspect, market,  
18                   distribute and/or place the Pet Food into the stream of commerce?  
19           B.     Was the Pet Food a defective product?  
20           C.     Did the Defendants knowingly or negligently make false  
21                   statements about the safety of the Pet Food?  
22           D.     Did Plaintiffs and others similarly situated rely upon Defendants'  
23                   false representations regarding the safety of the Pet Food for  
24                   consumption by animals?  
25           E.     Did Defendants breach any warranties regarding the safety of the  
26                   Pet Food?  
27           F.     Did Defendants know, or should they have known, about the risks

posed to pets consuming the Pet Food, and if so, when did they know of this risk?

- G. Did the Pet Food cause pets belonging to Plaintiffs and others similarly situated to become ill and/or die?
  - H. Did Plaintiffs and others similarly situated suffer compensatory damages as a result of Defendants' conduct?
  - I. Whether Defendants engaged in unfair business practices, false advertising or other deceptive practices in violation of California Business & Professions Code Sections 17200 et seq and 17500 et seq and/or Civil Code Section 1770 ct seq.
  - J. Whether Defendants acted with, malice, oppression, fraud and/or with gross negligence in disregard of humanity, thereby justifying the award of punitive and exemplary damages.
  - K.. The effect upon and the extent of damages suffered by the PLAINTIFF CLASS and the appropriate amount of compensation.
  - L. Whether injunctive relief against Defendants is appropriate and if so the nature and extent of such relief.

22. The claims of Plaintiffs pled as class action claims are typical of the claims of all members of the class as they arise out of the same course of conduct and are predicated on the same violation(s) of the law. Plaintiffs, as representative parties, will fairly and adequately protect the interests of the class by vigorously pursuing this suit through their attorneys who are skilled and experienced in handling matters of this type.

23. The nature of this action and the nature of the laws available to the PLAINTIFF CLASS make use of the class action format a particularly efficient

1 and appropriate procedure to afford relief to the PLAINTIFF CLASS. Further,  
2 this case involves corporate defendants and a large number of individuals  
3 possessing claims with common issues of law and fact. If each individual were  
4 required to file an individual lawsuit, the corporate defendants would necessarily  
5 gain an unconscionable advantage since they would be able to exploit and  
6 overwhelm the limited resources of each individual plaintiff with their vastly  
7 superior financial and legal resources. Proof of common business practices or  
8 factual patterns, of which the named plaintiffs experienced, is representative of the  
9 class mentioned herein and will establish the right of each of the members of the  
10 class to recovery on the claims alleged herein.

11

12       24. The prosecution of separate actions by the individual class members,  
13 even if possible, would create: (a) a substantial risk of inconvenient or varying  
14 verdicts or adjudications with respect to the individual class members against the  
15 defendants herein; and/or (b) legal determinations with respect to individual class  
16 members which would, as a practical matter, be dispositive of the other class  
17 members not parties to the adjudications or which would substantially impair or  
18 impede the ability of class members to protect their interests. Further, the claims  
19 of the individual members of the class are not sufficiently large to warrant  
20 vigorous individual prosecution considering all of the concomitant costs and  
21 expenses attending thereto. Plaintiffs are also unaware of any difficulties that are  
22 likely to be encountered in the management of this action that would preclude its  
23 maintenance as a class action.

24

25

#### **FACTS COMMON TO ALL COUNTS**

26       25. Plaintiffs are informed and believe and thereon allege that Defendants  
27 manufactured, sold, re-sold, inspected, marketed, distributed and/or placed into the  
28 stream of commerce various brands of the Pet Food. The Pet Food was marketed

1 and advertised by Defendants throughout California and the United States as being  
2 safe and healthy for pets to consume. Moreover, the Pet Food was sold in pet  
3 stores throughout California and the United States, including stores owned and  
4 operated by Defendant PETCO.

5

6       26. Plaintiffs are informed and believe and thereon allege that consumers  
7 throughout California and the United States purchased the Pet Food, which was  
8 fed to their cats and dogs. Plaintiffs are further informed and believe and thereon  
9 allege that as a result of ingesting the Pet Food, thousands of pets became  
10 seriously ill and required extensive medical care. Plaintiffs are further informed  
11 and believe and thereon allege that numerous pet animals have died as a direct  
12 result of ingesting the Pet Food.

13

14       27. On or about February 20, 2007, and possibly earlier, MENU FOODS  
15 learned that its Pet Food was causing dogs and cats to become sick and/or die.  
16 MENU FOODS had received numerous reports from around the country that the  
17 Pet Food was causing illness and death. In addition, several dogs and cats died in  
18 the course of its internal “taste testing” of the Pet Food.

19

20       28. Despite the fact that it knew or should have known that the Pet Food  
21 was defective and causing death and illness to household cats and dogs as early as  
22 February 20, 2007, MENU FOODS delayed reporting any problem to the United  
23 States Food and Drug Administration (“FDA”) – the governmental agency imbued  
24 with overseeing the pet food industry – until more than three weeks later, on  
25 March 15, 2007. As a result of MENU FOODS’ delay in reporting the problem to  
26 the FDA, more dogs and cats throughout the country became sick and/or died.

27

28       29. Beginning on March 16, 2007 -- long after it knew or should have

1 known that the Pet Food was defective and presented a serious risk to the health  
2 and safety of pets – MENU FOODS commenced to issue a series of piecemeal,  
3 incomplete and misleading press releases and public assurances. Over the course  
4 of the ensuing month, and perhaps longer, it issued supplemental recalls, provided  
5 false assurances regarding the parameters of the recall, and expanded its list of  
6 recalled products on no fewer than four occasions.

7

8       30. On or about March 16, 2007, MENU FOODS issued what it deemed a  
9 “Precautionary” recall of dog and cat food. The recall was limited to specified  
10 brands of ““cuts and gravy”” style pet food in cans and pouches” that had been  
11 manufactured between December 3, 2006 and March 6, 2007. MENU FOODS  
12 represented that it was “taking this proactive step out of an abundance of caution,”  
13 creating a false assurance that they were erring on the side of being overly  
14 inclusive in its recall.

15

16       31. Between March 16 and April 5, 2007, while household pets continued  
17 to get sick and/or die as a result of ingesting the tainted Pet Food, MENU FOODS  
18 continued to assure pet owners and the public at large that the “precautionary”  
19 recall was limited to “cuts and gravy style” wet food and only to the specific  
20 brands and dates of manufacture specified in its recall notice of March 16, 2007.  
21 On March 26, 2007, in light of conflicting public reports, MENU FOODS assured  
22 the public that it had not expanded its recall and that there was “no evidence” of  
23 contamination of products not identified on the recall list. On March 30, 2007,  
24 MENU FOODS assured the public that its non-recalled food was safe and healthy  
25 for consumption by North America’s pets. Paul K. Henderson, MENU FOODS’  
26 President and CEO, announced that “Our products are safe.”

27

28       32. As it turned out, MENU FOODS’ assurances were false and

1 misleading, and the parameters specified in its March 16<sup>th</sup> recall grossly inaccurate  
2 and insufficient to protect pet owners and their pets.

3

4       33. On or about April 3, 2007, defendant CHEM NUTRA publicly  
5 identified itself as the supplier of wheat gluten to three unidentified pet food  
6 manufacturers and one unidentified distributor. CHEM NUTRA announced that  
7 melamine had been found in its wheat gluten and announced that it was recalling  
8 specified batch numbers of wheat gluten that it had shipped between November 9,  
9 2006 and March 8, 2007.

10

11       34. On or about April 5, 2007, MENU FOODS, contrary to its earlier  
12 assurances, added that it was recalling an additional 20 varieties of dog and cat  
13 food and that it was expanding the temporal parameters of its recall to include  
14 products manufactured between November 8, 2006 through March 6, 2007.

15

16       35. On or about April 10, 2007, MENU FOODS, contrary to its earlier  
17 assurances, announced that it was recalling an additional 28 varieties of dog and  
18 cat food in the United States.

19

20       36. On or about April 17, 2007 – more than a month after its initial recall  
21 – MENU FOODS expanded (or in its own words, “refined”) the recall list to  
22 include one additional item and two additional production dates.

23

24       37. Plaintiffs are informed and believe and thereon allege that there are  
25 thousands of pets throughout the United States who ingested the Pet Food and, as  
26 a result, became ill and/or died and required their owners to incur substantial  
27 veterinarian and other related expenses. MENU FOODS substantially  
28 compounded the incidence of pet deaths and illness by providing false and

1 misleading assurances regarding the safety of its products, by delaying its  
2 notification to the FDA, and by issuing inaccurate, confusing and piecemeal press  
3 releases that failed to disclose the full extent of the contamination of the Pet Food.

4

5       38. Plaintiffs are informed and believe and thereon allege that the Pet  
6 Food was defective due to a defect in design, manufacturing, reconditioning,  
7 inspection and/or warning. In particular, Plaintiffs are informed and believe and  
8 thereon allege that the Pet Food was contaminated with dangerous substances,  
9 including, without limitation, aminopterin (a form of rat poison) and/or melamine  
10 (a component used in the manufacture of plastic and fertilizer) and which causes  
11 death and/or serious illness when ingested by dogs or cats.

12

13       39. Plaintiffs are informed and believe and thereon allege that Defendants,  
14 and each of them, knew or should have known that the Pet Food was defective  
15 and posed an unreasonable safety risk to the safety of animals who would consume  
16 it. Plaintiffs are further informed and believe and thereon allege that Defendants  
17 concealed from members of the consuming public, including Plaintiffs and others  
18 similarly situated, the nature and scope of the product defect.

19

20       40. Plaintiffs are informed and believe and thereon allege that in  
21 furtherance of their active concealment and suppression of information  
22 concerning the product defect, defendants caused to be published deceptive and  
23 misleading advertising that emphasized that their products were safe, healthy and  
24 free from known safety defects, when in fact they were not. Plaintiffs are informed  
25 and believe and thereon allege that Defendants intended such false and deceptive  
26 advertising to lull the consuming public into a false sense of security by inducing  
27 reliance on Defendants' claims of high quality and safety.

28

1       41. Plaintiffs are informed and believe and thereon allege that at all  
2 relevant times, Defendants' knowledge and understanding of the product defect  
3 and its resulting danger to animals was substantially greater than that of Plaintiffs  
4 and others similarly situated, who were unaware of the nature or cause of the  
5 product defect, and had no access to Defendants' research and testing results,  
6 product statistics, or other internal information in that regard.

7

8       42. Plaintiffs are informed and believe and thereon allege that Defendants  
9 were aware of the risk of serious injury caused by the sale of the Pet Food, but that  
10 defendants deliberately chose not to fix, recall or correct these problems because  
11 of the expense involved, thus placing their own economic interests over those of  
12 consumers such as plaintiffs and others similarly situated.

13

14       43. Plaintiffs are informed and believe and thereon allege that Defendants  
15 manufactured, sold, re-sold, inspected, marketed, distributed and/or placed into the  
16 stream of commerce various brands of the Pet Food. The Pet Food was marketed  
17 and advertised by Defendants throughout the State of California as being safe and  
18 healthy for pets to consume. Moreover, the Pet Food was sold in pet stores  
19 throughout California, including stores owned and operated by Defendant PETCO.

20

21       44. Plaintiffs are informed and believe and thereon allege that consumers  
22 throughout California purchased the Pet Food, which was fed to their cats and  
23 dogs. Plaintiffs are further informed and believe and thereon allege that as a result  
24 of ingesting the Pet Food, thousands of pets became seriously ill and required  
25 extensive medical care. Plaintiffs are further informed and believe and thereon  
26 allege that numerous pet animals have died as a direct result of ingesting the Pet  
27 Food. On or about March 16, 2007, Defendant MENU FOODS, the principal  
28 manufacturer of the tainted Pet Food, issued a recall of the Pet Food (which was

1 manufactured between December 3, 2006 and March 6, 2007). Plaintiffs are  
2 further informed and believe and thereon allege that prior to the recall, Defendant  
3 MENU FOODS and other defendants either knew or should have known that the  
4 Pet Food was defective and presented a serious risk to the health and safety of  
5 animals.

6

7       45. As a result of the acts and omissions of defendants and each of them,  
8 thousands of pet owners throughout the United States including Plaintiffs Losis  
9 Grady, Kate Steinsaif, Barbara Gonzales, Frank Bodeman and Craig Anderson fed  
10 their pets tainted pet food and as a result their pets suffered serious, and sometimes  
11 fatal illnesses, including kidney failure . As a result thousands of pet owners,  
12 including Plaintiffs, sustained compensatory damages, including, without  
13 limitation, veterinary bills and /or burial bills and related expenses.

14

15

16       46. Plaintiffs are informed and believe and thereon allege that the Pet  
17 Food was defective due to a defect in design, manufacturing, reconditioning,  
18 inspection and/or warning. In particular, Plaintiffs are informed and believe and  
19 thereon allege that the Pet Food was contaminated with dangerous substances,  
20 including aminopterin (a form of rat poison) and/or melamine (a component used  
21 in the manufacture of plastic and fertilizer) which causes death and/or serious  
22 illness when ingested by dogs or cats.

23

24       47. Plaintiffs are informed and believe and thereon allege that Defendants,  
25 and each of them, knew or should have known that the Pet Food was defective  
26 and posed an unreasonable safety risk to the safety of animals who would consume  
27 it. Plaintiffs are further informed and believe and thereon allege that Defendants  
28 concealed from members of the consuming public, including Plaintiffs and others

similarly situated, the nature and scope of the product defect.

48. Plaintiffs are informed and believe and thereon allege that in furtherance of their active concealment and suppression of information concerning the product defect, defendants caused to be published deceptive and misleading advertising that emphasized that their products were safe, healthy and free from known safety defects, when in fact they were not. Plaintiffs are informed and believe and thereon allege that Defendants intended such false and deceptive advertising to lull the consuming public into a false sense of security by inducing reliance on Defendants' claims of high quality and safety.

**FIRST CAUSE OF ACTION**  
**STRICT PRODUCTS LIABILITY**  
**(Against All Defendants)**

49. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 48, inclusive as though set forth herein in their entirety.

50. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, said defendants, and each of them, and their successors, designed, manufactured, built, assembled, adjusted, repaired, inspected, re-sold and/or introduced into interstate and/or intrastate commerce for sale therein, sold, distributed, supplied, maintained, controlled, cared for, supervised, attended to, inspected, engaged in testing, labeling, transporting, storing, advertising, marketing, selling and recommending the Pet Food to the general public and other ultimate users (including Plaintiffs and others similarly situated) throughout the United States, including the State of California. Defendants represented to the general public, including Plaintiffs and others similarly situated, that the Pet Food

1 was safe and healthy for animals to eat.

2  
3       51. Plaintiffs are informed and believe and thereon allege that the Pet Food  
4 was defective, unsafe, hazardous, perilous, insecure, unfit, and dangerous for its  
5 intended use, and the purposes for which it was intended, by reason of defect(s) in  
6 its design, assembly, adjustment, manufacture, construction, maintenance,  
7 installation, operation, control, care, supervision, attention to, servicing, upkeep,  
8 repair, inspection, testing, processing, producing, packaging, labeling, storing,  
9 advertising, warning, recommendations and sale, in that the Pet Food was  
10 contaminated and therefore failed to meet the reasonable expectations of the  
11 ordinary consumer when the Pet Food was used for its intended purposes, and/or  
12 its reasonably foreseeable uses, as heretofore mentioned.

13

14       52. Plaintiffs are informed and believe and thereon allege that at all  
15 relevant times, Plaintiffs, and others similarly situated were using the Pet Food in  
16 a manner consistent with its intended purpose, and/or its foreseeable use and in the  
17 manner recommended by Defendants, and each of them, as heretofore mentioned.  
18 As a direct and proximate result of the defects as aforesaid, the Pet Food failed to  
19 perform as safely as the ordinary consumer would expect which caused illness to  
20 Plaintiffs' pets, thereby directly and proximately causing the resulting damages to  
21 Plaintiffs and others similarly situated.

22

23       53. Plaintiffs are informed and believe and thereon allege that as a direct  
24 and proximate result of the acts and omissions of Defendants, and each of them, as  
25 herein alleged, Plaintiffs suffered the damages alleged herein in an amount within  
26 the jurisdiction of this Court.

27

28       54. Plaintiffs are informed and believe and thereon allege that the

1 aforementioned acts and omissions of Defendants Menu Foods and Chem-Nutra  
2 were willful, malicious, intentional, oppressive, fraudulent and despicable and  
3 were done in willful and conscious disregard of the rights, welfare and safety of  
4 Plaintiffs and others similarly situated and/or with gross negligence in disregard of  
5 humanity, thereby justifying the awarding of punitive and exemplary damages in  
6 an amount to be determined at time of trial. Plaintiffs are informed and believe  
7 and on that basis alleges that officers, directors and/or managing agents of Menu  
8 Foods acted in conscious disregard of Plaintiffs' rights and the safety of Plaintiffs'  
9 pets by designing, distributing, or selling the Pet Food, despite the known defects  
10 in the Pet Food, which the officers, directors and/or managing agents of  
11 Defendants knew would injure persons such as Plaintiffs. To the extent that any  
12 officer, director and/or managing agent of each of the Defendants did not  
13 personally commit the malicious, oppressive or fraudulent acts described above,  
14 each such defendant authorized or ratified the malicious, oppressive and/or  
15 fraudulent act.

16

17 **SECOND CAUSE OF ACTION**

18 **NEGLIGENCE**

19 **(Against All Defendants)**

20

21 55. Plaintiffs hereby incorporate by reference the allegations in paragraphs  
22 1 through 54, inclusive as though set forth herein in their entirety.

23

24 55. Defendants, and each of them owed a duty of care towards Plaintiffs  
25 and others similarly situated and the general public in which they were required to  
26 use reasonable diligence and due care in the manufacturing, design, marketing,  
27 distribution, inspection, storage and/or sale of The Pet Food. Plaintiffs are  
28 informed and believe and thereon allege that Defendants, and each of them,

1 breached their duty of care by causing contaminated Pet Food to enter stream of  
2 commerce where it was consumed by thousands of pet animals, many of whom  
3 became seriously ill and/or died and by concealing from and misrepresenting to  
4 the general public the defective condition of The Pet Food.

5

6       56. As a direct and legal result of the negligent acts and omissions of  
7 Defendants, and each of them, plaintiffs and others similarly situated have  
8 suffered damages, including, without limitation, veterinarian bills and related  
9 expenses.

10

11       57. Plaintiffs are informed and believe and thereon allege that at all  
12 relevant times, Defendants, and each of them, and their successors, so negligently,  
13 carelessly, recklessly and unlawfully designed, manufactured, built, sold,  
14 distributed, supplied, assembled, adjusted, constructed, installed, maintained,  
15 operated, controlled, cared for, created warnings for, supervised, attended to,  
16 serviced, repaired, inspected, tested, introduced into interstate and/or intrastate  
17 commerce for sale therein, advertised, recommended and stored the Pet Food,  
18 thereby direct and proximately causing the resulting damages to Plaintiffs and  
19 others similarly situated as alleged herein.

20

21       58. Plaintiffs are informed and believe and thereon allege that as a direct  
22 and proximate result of the negligent acts and omissions of Defendants, and each  
23 of them,, Plaintiffs and others similarly situated suffered the damages alleged  
24 herein in an amount within the jurisdiction of this Court.

25

26

27

28

**THIRD CAUSE OF ACTION**  
**BREACH OF WARRANTIES**  
**(Against All Defendants)**

5        59. Plaintiffs hereby incorporate by reference the allegations in paragraphs  
6        1 through 58, inclusive as though set forth herein in their entirety.

8       60. Plaintiffs are informed and believe and thereon allege that at all times  
9 herein mentioned, and prior thereto, Defendants, and each of them, and their  
10 successors, designed, manufactured, assembled, adjusted, introduced into  
11 interstate and/or intrastate commerce for sale therein, sold, distributed, supplied,  
12 constructed, maintained, controlled, cared for, supervised, attended to, serviced,  
13 inspected, engaged in testing, processing, producing, packaging, labeling,  
14 transporting, into interstate and/or intrastate commerce for sale therein, storing,  
15 advertising, selling and recommending the Pet Food to the general public and  
16 other ultimate users and for use with all knowledge and intent that it be used by  
17 the general public and other ultimate users, and said defendants, and each of them,  
18 including all fictitiously named defendants herein, and their successors impliedly  
19 represented that the Pet Food was fit for the purpose and uses for which it was  
20 intended.

22        61. Plaintiffs and others similarly situated relied upon said  
23 representations and warranties and had no knowledge of the dangerous, unsafe,  
24 hazardous, and unfit quality of The Pet Food.

26        62. Plaintiffs are informed and believe and thereon allege that the Pet  
27 Food was and is unsafe, hazardous, perilous, insecure, dangerous and unfit when  
28 used for the purposes for which it was intended and in the manner recommended

1 by Defendants, and each of them, and their successors, which resulted in damages  
2 and injuries to Plaintiffs and others similarly situated, as alleged herein.

3

4

5 **FOURTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION AND BUSINESS PRACTICES**

7 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE**

8 **SECTION 17200, ET SEQ.)**

9 **(Against All Defendants)**

10

11 63. Plaintiffs hereby incorporate by reference the allegations in paragraphs  
12 1 through 62, inclusive, as though set forth herein in their entirety.

13

14 64. Defendants' unlawful and unfair practices as alleged herein violate  
15 California law and constitute ongoing and continuous unfair business practices  
16 within the meaning of Business and Professions Code §17200. Such practices  
17 include, but are not limited to, Defendants making false representations as to the  
18 safety of the Pet Food and Defendants' concealment from members of the public  
19 the danger that the Pet Food posed to dogs and cats while continuing to  
20 manufacture, market, sell and distribute The Pet Food.

21

22 65. California Business and Professions Code §17200 prohibits unfair  
23 competition and unfair business practices, including, "any unlawful, unfair or  
24 fraudulent business act or practice . . ." Defendants' conduct as specified herein,  
25 constitutes a violation of California Business and Professions Code §17200, et  
26 seq.

27

28 66. As a result of Defendants' unfair business practices, Defendants have

1 reaped unfair benefits and illegal profits at the expense of Plaintiffs, the  
2 PLAINTIFF CLASS and members of the public. Defendants should be made to  
3 disgorge their ill-gotten gains and restore such monies to Plaintiffs and the  
4 PLAINTIFF CLASS.

5

6 67. Defendants' unfair business practices entitle Plaintiffs and the  
7 PLAINTIFF CLASS to seek preliminary and permanent injunctive relief,  
8 including but not limited to, orders that the Defendants account for, disgorge and  
9 restore to Plaintiffs and the PLAINTIFF CLASS the compensation unlawfully  
10 withheld from them. Accordingly, Plaintiffs seek disgorgement of all profits  
11 resulting from these unlawful, unfair, and fraudulent business practices,  
12 restitution, and other appropriate relief as provided for by Business & Professions  
13 Code §17203.

14

15 **FIFTH CAUSE OF ACTION**

16 **FALSE ADVERTISING**

17 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE**

18 **SECTION 17500, ET SEQ.)**

19 **(Against All Defendants)**

20

21 68. Plaintiffs hereby incorporate by reference the allegations in  
22 paragraphs 1 through 67, inclusive as though set forth herein in their entirety.

23

24 69. California Business and Professions Code §17500 prohibits  
25 various deceptive practices in connection with the dissemination in any manner of  
26 representations for the purpose of inducing, or which are likely to induce, directly  
27 or indirectly, customers to purchase consumer products such as the tainted pet  
28 food described herein.

70. Defendants' acts, practices, misrepresentations, and omissions as alleged herein were intended to, and did, induce the consuming public, including Plaintiffs, to purchase the tainted pet food, and violated and continue to violate California Business & Professions Code Section 17500, in that the products did not conform to Defendants' representations

8        71. As a result of the foregoing, Plaintiffs are entitled to injunctive and  
9 equitable relief, including restitution, and an order requiring disgorgement of  
10 Defendants' ill gotten gains.

## SIXTH CAUSE OF ACTION

**VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT, CIVIL  
CODE § 1750 ET. SEQ.)  
(AGAINST ALL DEFENDANTS)**

17        72. Plaintiffs hereby incorporate by reference the allegations in paragraphs  
18 1 through 71, inclusive as though set forth herein in their entirety.

20        73. This claim arises under the Consumer Legal Remedies Act (“CLRA”),  
21 Civ. Code §1750 *et seq.*, and is alleged against all defendants. The CLRA was  
22 designed to protect consumers from unfair and deceptive business practices.

24       74. At all times relevant hereto, Plaintiffs, including Plaintiff Class  
25 Members, were “consumers,” as that term is defined in Civ. Code §1761(d).  
26 Moreover, at all times relevant hereto, Defendants provided “goods,” as that term  
27 is defined in Civ. Code §1761(a).

1       75. The CLRA provides in relevant part that certain unfair or deceptive  
2 acts or practices undertaken by any person in a transaction intended to result or  
3 which results in the sale or lease of goods or services to any consumer are  
4 unlawful. Plaintiffs are informed and believe and thereon allege that the  
5 Defendants violated the CLRA, including, without limitation, the following  
6 provisions of California Code of Civil Procedure Section 1770(a):

7  
8                 (5) Representing that goods or services have sponsorship,  
9 approval, characteristics, ingredients, uses, benefits, or quantities  
10 which they do not have or that a person has a sponsorship, approval,  
11 status, affiliation, or connection which he or she does not have;  
12 Representing that goods or services are of a particular standard,  
13 quality, or grade, or that goods are of a particular style or model, if  
14 they are of another;

15  
16                 (7) Representing that goods or services are of a particular  
17 standard, quality, or grade, or that goods are of a particular style or  
18 model, if they are of another.

19  
20       76. In engaging in unfair and deceptive conduct in violation of the CLRA,  
21 Defendants actively concealed and intentionally failed to disclose material facts  
22 about the characteristics of the pet food, and further represented to Plaintiffs and  
23 the general public that such pet food was safe and suitable for pet consumption.

24  
25       77. As a result of Defendants' unfair and deceptive business practices,  
26 Defendants have reaped unfair benefits and illegal profits at the expense of  
27 Plaintiffs, the PLAINTIFF CLASS and members of the public. Defendants should  
28 be made to disgorge their ill-gotten gains and restore such monies to Plaintiffs and

1 the PLAINTIFF CLASS.

2  
3 78. Pursuant to Civil Code Sections 1780 and 1781, Plaintiffs and  
4 PLAINTIFF CLASS request certification of Plaintiff Class, restitution, injunctive  
5 relief and an award of reasonable attorney's fees and costs pursuant to Civil Code  
6 § 1780.  
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of  
10 them, as follows:

- 11 1. That causes of action one through six may be maintained as a class  
12 action;  
13 2. For compensatory damages in an amount within the jurisdictional  
14 limits of this court according to proof as to the First, Second and Third Causes of  
15 Action, including medical, burial and related expenses , according to proof;  
16 3. For punitive damages, according to proof pursuant to Civil Code  
17 Sections 3294 and/or 3340 against Defendants Menu Foods and Chem-Nutra;  
18 4. For injunctive and equitable relief as to the Fourth, Fifth and Sixth  
19 Causes of Action, including an accounting of profits and restitution based on  
20 Defendants' unjust enrichment and unfair and deceptive practices, according to  
21 proof  
22 5. For cost of suit;  
23 6. For attorneys fees pursuant to Code of Civil Procedure Section  
24 1021.5, California Civil Code Section 1780 and other applicable provisions of  
25 law;  
26  
27  
28

- 1       7. For interest at the legal rate; and  
2       8. For such other and further relief as the Court may deem just and  
3 proper.

4  
5 Dated: April 24, 2007

HELMER • FRIEDMAN, LLP

6 SCHONBRUN DeSIMONE SEPLOW  
7 HARRIS & HOFFMAN LLP



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Gregory Helmer  
Michael D. Seplow  
10 Attorneys for Plaintiffs

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1                   **DEMAND FOR JURY TRIAL**

2                   Plaintiffs Lois Grady et al. hereby demand a trial by jury on all claims.

3  
4  
5 Dated: April 24, 2007

HELMER • FRIEDMAN, LLP

6                   SCHONBRUN DeSIMONE SEPLOW  
7                   HARRIS & HOFFMAN LLP

8                     
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10                  Gregory Helmer  
11                  Michael D. Seplow  
12                  Attorneys for Plaintiffs

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**PROOF OF SERVICE****STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am a resident of the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 723 Ocean Front Walk, Venice, CA 90291.

On April 24, 2007, I served the foregoing documents described as:

**FIRST AMENDED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF**

on all interested parties in this action by placing        originals or  true copies thereof enclosed in separate sealed envelopes addressed to each of the following individuals.

Jean M. Lawler  
Gina E. Och  
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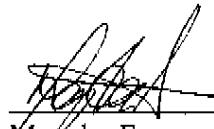
X [MAIL] I caused such envelope to be deposited in the mail at Venice, California. The envelope was mailed with postage thereof fully prepaid.

       [BY FEDERAL EXPRESS] I caused such envelopes to be delivered via federal express at Venice, California.

       [BY PERSONAL DELIVERY] I caused the foregoing documents to be personally served on the interested parties.

       [BY FAX] I transmitted the documents to the above by facsimile.

X [FEDERAL] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
\_\_\_\_\_  
Meraka Fernando